

#016

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION**

**HANY A. MAWLA
JUDGE**



**216 HADDON AVENUE
WESTMONT, NEW JERSEY 08108
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October 9, 2020

Glenn A. Grant, J.A.D.
Acting Administrative Director of the Courts
Attention: Comments on Proposed Amendments to Rule 1:42-1 and CLE Regulations –
Diversity, Inclusion, and Elimination of Bias Requirement
Hughes Justice Complex
P.O. Box 037
Trenton, NJ 08625-0037
Via email Comments.Mailbox@njcourts.gov

Re: Proposed Changes to Rule 1:42-1 and Board of Continuing Legal Education Regulations
103:1 and 201:1 –Diversity, Inclusion and Elimination of Bias Requirement

Dear Judge Grant:

The Supreme Court Committee on Diversity, Inclusion, and Community Engagement (“SCC-DI&CE”), in its advisory role to the Court, writes in full support of the proposed changes to Rule 1:42-1 (“Continuing Legal Education Required”) and CLE regulations 103:1 and 201:1 to require diversity, inclusion, and elimination of bias training for attorneys licensed in New Jersey.

While diversity and inclusion-oriented continuing legal education (“CLE”) courses may qualify as ethics and professionalism credits under the current framework, there has been no express requirement to take diversity courses. In fact, in the current paradigm, it has been entirely possible to complete one's CLE requirements without ever taking a diversity-focused course. This proposal remedies that unintended gap and assures that members of the New Jersey bar receive diversity, inclusion and cultural competency training.

Implicit and explicit bias exist in our society on individual and systemic levels. Science has proven that implicit biases subconsciously impact thoughts and decision-making processes. Since implicit bias is a reality in human thought and decision-making, mandating diversity, inclusion, and the elimination of bias as a specific requirement within the ethics and professionalism component of the New Jersey Continuing Legal Education framework helps assure the Court's role in effectuating fundamental fairness in the practice of law and the administration of justice.

In its review of the proposal, the SCC-DI&CE highlights several key benefits of the implementation of a diversity, inclusion, and elimination of bias training CLE requirement for attorneys and jurists:

- Expanding the ethics/professionalism requirement from four credits to five credits while not changing the overall biennial 24 credit requirement places the commitment to diversity, inclusion, and elimination of bias rightly within ethics and professionalism while not displacing other ethics and professionalism subjects already taught as mandatory CLEs.
- The 2.0 credit requirement allows for substantive and meaningful engagement in the topics of diversity and inclusion in the context of elimination of bias.
- Qualifying topical areas are set forth with clarity and consistently with relevant areas of diversity and inclusion and avenues to elimination of bias, allowing practitioners to select courses based on their interests, needs, and particular areas of professional practice.
- The January 1, 2021 effective date is timely and clear. During the SCC-DI&CE review, there were some comments shared regarding the common effective date in the context of staggered biennial compliance cycles. It was noted that some – perhaps even many – fulfill their biennial requirements in year one of their compliance cycle so the common effective date might present some burden on practitioners in the January 1, 2020-December 31, 2021 cycle who had already completed their ethics requirements and perhaps even their 24 credits overall. In order to avoid this unintended consequence on practitioners whose compliance cycle ends December 31, 2021, the question was raised as to whether the Court might wish to consider staggering the effective date to January 1, 2021 and January 1, 2022, according to the biennial compliance cycles. The SCC-DI&CE does not take a position on this specific point but respectfully presents it for the Court’s consideration.
- The value of adding an elimination of bias training requirement outweighs any perceived burden of having a specific area of focus added to the ethics/professionalism requirements.

In sum, the current proposal will advance the elimination of bias in the practice of law and the administration of justice in two specific ways: (a) by increasing the diversity and inclusion awareness of practitioners and jurists, and (b) by directly supporting the elimination of bias, particularly implicit bias, within ourselves individually and within the justice system by providing tools applicable to professional legal contexts.

The SCC-DI&CE thanks the Court for the opportunity to comment on the proposed changes to the current CLE requirements. This proposal beckons a more hopeful future free of prejudice and bias and their unwanted effects on access to the courts and procedural fairness experiences for New Jersey's continually increasing diverse communities. The Court's continuing leadership in furthering the elimination of bias in the practice of law and administration of justice remains a national model.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Hany A. Mawla', with a large loop at the top and a horizontal stroke at the bottom.

Hany A. Mawla, J.A.D.

Chair, Supreme Court Committee on Diversity, Inclusion, and Community Engagement

cc: Steven D. Bonville, Chief of Staff
Yolande P. Marlow, Ph.D., Diversity, Inclusion, and Community Engagement Program
Director
Lisa R. Burke, Diversity, Inclusion, and Community Engagement Program Coordinator